

Testimony of Jeff Ruch
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“Improving Information Quality in the Federal Government”
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Good morning. My name is Jeff Ruch and I am the Executive Director of Public Employees for Environmental Responsibility (PEER).

PEER is a service organization dedicated to protecting those who protect our environment. PEER provides federal, state, local and tribal employees dedicated to ecologically responsible management with a safe, collective and credible voice for expressing concerns. Headquartered in Washington, D.C., PEER has a network of ten state and regional offices. Most of our staff and board are former public employees who left public service after experiencing ethical conflicts within their former agencies.

On a daily basis, public employees in crisis contact PEER. In our D.C. office alone, we average five “intakes” per day. A typical intake involves a scientist or other specialist who is asked to shade or distort the truth in order to reach a pre-determined result, such as a favorable recommendation on a project or approval; of commercial release of a new chemical.

From PEER’s perspective, the federal government is suffering from a **severe disinformation syndrome**. The level of official dissembling from federal environmental and resource agencies has never been worse.

Today, I will outline the dimensions of this disinformation syndrome, trace some of the dynamics that drive this syndrome, examine the slight effectiveness and profound weaknesses of one tool, the Information Quality Act, and recommend key remedial steps.

I. The Disinformation Syndrome

The cases that PEER sees increasingly involve agencies manipulating scientific or other technical conclusions to fit a preset political agenda. Moreover, as detailed below, employees who try to expose falsehoods often lose their careers while managers who deliberately sanction official falsehoods more often than not are rewarded or promoted and are rarely, if ever, punished.

Admittedly, the employees who seek out PEER are a self-selected sample. Employees come to PEER to report dysfunctions or retaliation. In that respect, PEER sometimes resembles a battered staff shelter. Scores of individual cases do not necessarily represent an overall agency culture. As a means of obtaining a broader perspective for determining how intense and widespread these pressures have become, PEER, in partnership with the Union of Concerned Scientists (UCS), has undertaken a series of surveys of federal agency scientists. I believe that the results should be of interest to the Subcommittee.

This past February, we released the results of a survey of biologists, ecologists, botanists and other science professionals working in U.S. Fish & Wildlife Service (USFWS) Ecological Services field offices across the country. The survey posed 42 questions that had been selected by a committee of current and former agency staff to gauge current perceptions of scientific integrity within the USFWS, as well as political interference, resources and morale. Despite agency directives not to reply—even on their own time—nearly 30% of all the scientists returned surveys yielding the following results:

- Nearly half of all respondents whose work is related to endangered species scientific findings (44%) reported that they “have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species;”
- One in five agency scientists revealed they have been instructed to compromise their scientific integrity—reporting that they have been “directed to inappropriately exclude or alter technical information from a USFWS scientific document;”
- More than half of all respondents (56%) reported cases where “commercial interests have inappropriately induced the reversal or withdrawal of scientific conclusions or decisions through political intervention;” and
- More than a third (42%) said they could not openly express “concerns about the biological needs of species and habitats without fear of retaliation” in public while nearly a third (30%) felt they could not do so even inside the confines of the agency. Almost a third (32%) felt they are not allowed to do their jobs as scientists.

In essays submitted on the topic of how to improve the integrity of scientific work at USFWS, one biologist wrote, “We are not allowed to be honest and forthright, we are expected to rubber stamp everything. I have 20 years of federal service in this and this is the worst it has ever been.” By far, the most frequent concern raised by the scientists in the written responses was political interference.

A number of the essays spoke to the climate of fear within the agency. One biologist in Alaska wrote, “Recently, [Department of Interior] officials have forced changes in Service documents, and worse, they have forced upper-level managers to say things that are incorrect...It’s one thing for the Department to dismiss our recommendations, it’s quite another to be forced (under veiled threat of removal) to say something that is counter our best professional judgment.”

One manager wrote, “There is a culture of fear of retaliation in mid-level management. If the manager were to speak out for resources, they fear loss of jobs or funding for their programs.” And a biologist from the Pacific region added that the only “hope [to correct the record is that] we get sued by an environmental or conservation organization.”

These results strongly suggest that political science, not biology, has become the dominant discipline in today’s Fish & Wildlife Service. While political pressures within Fish & Wildlife Service have been particularly intense, especially on issues relating to threatened and endangered species, we do not believe that this agency is unique with regard to manipulation of scientific information.

This past June, PEER and UCS released the results of a similar survey of scientists within the National Oceanic & Atmospheric Administration Fisheries Service. While NOAA Fisheries resides within a completely different Cabinet agency, the results paralleled those from within the Interior Department:

- A strong majority (58%) said they know of cases in which high-level Commerce Department appointees or managers “have inappropriately altered NOAA Fisheries determinations;”
- More than one third of respondents working on such issues (37%) have “been directed, for non-scientific reasons, to refrain from making findings that are protective” of marine life;
- Nearly one in four (24%) of those conducting such work reported being “directed to inappropriately exclude or alter technical information from a NOAA Fisheries scientific document;” and
- More than half of all respondents (53%) are aware of cases in which “commercial interests have inappropriately induced the reversal or withdrawal of NOAA Fisheries scientific conclusions or decisions through political intervention.”

In essays submitted on the topic of how to improve the integrity of scientific work at the agency, once again the predominant concern raised by the scientists was political interference. One biologist wrote, “It seems that we are encouraged to think too much about the consequences and how to get around them, rather than just basing our recommendations on the best available data.” Another added, “. . . it is not uncommon to be directed to not communicate debates in writing. I have also seen written documents that include internal discussions/debate purposefully omitted from administrative records with no valid reasoning.”

In both USFWS and NOAA Fisheries, official spokespersons dismissed these results and suggested that the survey methodology was flawed. Notwithstanding the fact that hundreds of agency scientists reported scientific manipulation, neither agency deemed it valuable to explore the matter further. These official responses only reinforce the perceptions that debate, let alone dissent, is unwelcome within the federal ranks,

particularly among scientists who come from disciplines that are supposed to value disputation and rigorous examination.

While we know of few official surveys on precisely these topics, those that we do know about produced outcomes that paralleled the results produced by the PEER/UCS surveys. A previously unpublished internal survey of Food and Drug Administration scientists, that PEER obtained through the Freedom of Information Act, closely tracks the concerns raised by the agency's own Associate Director for Science and Medicine in the Office of Drug Safety, Dr. David Graham, in testimony before the Senate this past November.

The Health and Human Services Office of Inspector General conducted the survey in late 2002 as part of a management review of how the agency was meeting stringent deadlines for approving new drugs. OIG polled 846 FDA scientists, with nearly half (47%) completing the survey. Survey findings included the following:

- Nearly one in five scientists (18%) said that they “have been pressured to approve or recommend approval” for a drug “despite reservations about the safety, efficacy or quality of the drug;”
- Less than one third of scientists (29%) felt that the “work environment” at FDA allowed wide leeway for “expressions of differing scientific opinions related to” new drug application decisions, while 21% said the work environment offered little or no room for dissent, with fully half (50%) answering that scientific dissent was allowed only “to some extent”; and
- Less than one in five (17%) felt the agency had “adequate procedures in place to address scientific disagreements” to a “great extent,” while 45% felt adequate procedures existed only to “some extent” and more than a third (38%) said procedures for resolving dissent existed only to a “small extent” or “not at all.”

II. Factors Driving the Disinformation Syndrome

In PEER's view, three major factors are contributing to the declining state of truthfulness in federal agencies:

1. Whistleblowers Lack Adequate Legal Protection

The House Government Reform Committee is currently reviewing legislation to strengthen the distressingly weak Whistleblower Protection Act. I will not reiterate that discussion in this testimony except to note that scientists who raise concerns about the quality of studies or the validity of findings often have no legal protection at all.

In the federal civil service, scientists have little protection against reprisal for delivering accurate but politically inconvenient findings. For example, the practice of “good science” is not recognized as protected activity under the federal Whistleblower Protection Act, unless 1) the scientist is reporting a falsification that violates a law or

regulation; or 2) the scientific manipulation itself creates an imminent danger to public health and safety.

Absent those unusual circumstances, a disclosure of a skewed methodology or suppression of key data is treated as if it were a policy dispute, for which the disclosing scientist has no legal protection or standing.

In 2003, nearly half of the federal civilian workforce lost traditional civil service protections (in the Departments of Homeland Security and Defense). In these agencies, the emerging management regime resembles a private sector, at-will employment system. Scientists in these agencies can easily be fired, de-funded, transferred or otherwise redirected simply because the results of their scientific work cause political displeasure.

The only body of law that protects government scientists is the handful of environmental statutes, including the federal Clean Air and Clean Water Acts, that protect disclosures made by any employee, public or private sector, that further the implementation of those acts. Scientific disclosures falling outside of these eight laws, however, lack similar legal protection.

Senator Dick Durbin (D-IL) has introduced a bill that would prohibit political tampering or censorship of government science and protect scientists who blow the whistle on abuses. The bill is a companion to the House “Restore Scientific Integrity” bill introduced earlier this year by Rep. Henry Waxman (D-CA) and Bart Gordon (D-TN).

2. Agencies Reward Lack of Truthfulness

The other side of the whistleblower coin is the fabrication on which the whistle is being blown. In PEER’s experience, it is rare that agency fabricators are ever punished. To the contrary, it is common for official fabricators to be rewarded and promoted. In the U.S. Forest Service, the phrase describing this phenomenon is “Screw up and move up.”

The reason behind this perverse dynamic seems evident: managers who dissemble to achieve a pre-determined result are simply doing the bidding of the agency’s top political appointees. To convey just how widespread this “lie to succeed” culture has become in federal service, consider the example of the Forest Service. Successful environmental litigation against the Forest Service usually revolves around an agency action that a federal court has found to be “arbitrary and capricious” or “lacking a rational basis.”

Thus, in order for a non-profit group to prevail against the government in a challenge under statutes like the Endangered Species Act or the National Environmental Policy Act, that group, in essence, must show that the government is proceeding on almost a complete absence of factual basis. The way these small non-profit groups successfully meet this heaviest of burdens in civil jurisprudence is by demonstrating that the agency falsified its own scientific record, ignored its own specialists, and produced a decision document or finding that gets laughed out of court.

How often does this happen? In the Forest Service it happens about once every two

weeks. According to an internal memo obtained by PEER, the Forest Service lost 44 court cases during the past two years in which the agency was found guilty of violating environmental laws by a federal court. The list of 44 cases, covering the period 2003 and 2004 fiscal years, is limited to cases where the court found both that the Forest Service violated the law and that its position could not be “substantially justified.” In those instances, the agency was ordered to pay the attorneys fees of the environmental group bringing the lawsuit. As a result, the Forest Service has made payments to environmental groups totaling \$2.2 million over the last two years.

The agency figures point to a growing rate of court rulings against the agency, with 27 adverse rulings in FY 04 and 17 adverse rulings in FY 03. An online search of federal court decisions in cases where the Forest Service was a defendant showed 10 adverse rulings in 2002 and only 4 in 2001. The totals for prior years were even smaller with the highest total for any year going back to 1994 being 3 adverse rulings. The list of 44 cases understates the extent of violations by the Forest Service in that it does not include cases that were settled by the agency in order to avoid adverse rulings. Nor does it include cases that were thrown out on technical grounds even though substantive environmental violations occurred.

More disturbing than the rulings is that, to our knowledge, not a single Forest Service manager was transferred, disciplined or suffered any discernible negative career consequences for committing deliberate environmental violations where a federal court found that the agency official acted in the face of overwhelming evidence to the contrary. In other words, the Forest Service appears to reward its line managers for breaking the law.

3. Congressional and Other External Oversight Has Diminished

With unfortunately very few exceptions, Congressional scrutiny of the quality of information disseminated, used or relied upon by federal agencies is in marked decline. Without going into the reasons for the lack of willingness or ability of Congressional committees to act as a meaningful check on incorrect information issued by the Executive Branch, suffice it say that agency whistleblowers who approach committees with cases of misinformation face long odds of success – or survival.

Outside of Congress, a federal employee may approach the U.S. Office of Special Counsel. Sadly, the performance of this office has been far less than special, especially of late. According to the figures released by Special Counsel Scott Bloch, in the past year the Office of Special Counsel dismissed or otherwise disposed of 600 whistleblower disclosures where civil servants have reported waste, fraud, threats to public safety and violations of law (100 disclosures are still pending). The Special Counsel has yet to announce a single case in which he has ordered an investigation into the employee’s charges.

To put those numbers in perspective, in 700 cases where federal employees reported fraud or abuse from 2000 through 2003, none have moved forward. There are no official reports of what, if any, action occurred as a result of employee whistleblower disclosures

in 2004 and 2005. It seems that a federal employee would have better chances of winning the Powerball lottery than of getting a problem redressed by the Office of Special Counsel.

Lastly, there is the agency Inspector General. The “IGs,” however, are under no compulsion to investigate complaints of false or fraudulent agency documents, even when an agency employee makes a formal complaint. If it decides to investigate, an IG is under no deadline to finish a report, and some investigative reports are kept in draft or un-releasable status for years. Moreover, an IG can reframe the issue it decides to investigate and report back on a question that is not the focus of the original complaint. PEER has seen instances where employees who make complaints to an IG themselves become the subject of the IG investigation. Further, on technical or scientific questions, the IG often does not have the resident expertise to undertake an inquiry. And finally, even if the IG identifies a false or fraudulent study or record, it has no power to do more than recommend its correction.

Consequently, a federal employee who seeks to correct an incorrect federal document, especially on any matter of political import, faces daunting odds.

III. Pros and Cons of the Information Quality Act

1. Overview

In 2000, Congress enacted a provision commonly referred to as the Data Quality Act or the Information Quality Act (IQA). It was enacted without hearings as part of an omnibus measure (Section 515 of the FY 2001 Treasury and General Government Appropriations Act; PL106-554). Today’s hearing, five years after the fact, is, I believe, the first Congressional hearing on the IQA.

The IQA directed the President’s Office of Management and Budget (OMB) to establish government-wide standards in the form of guidelines designed to maximize the “quality,” “objectivity,” “utility,” and “integrity” of information that Federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model.

I believe I was invited to testify today because PEER is one of the few non-industry organizations to make use of the IQA. PEER has used the IQA to assist federal scientists seeking to stop their agencies from perpetuating a fraud. We think other progressive and public interest organizations should be using the IQA. Perhaps, this is a distinctly minority viewpoint among organizations in which PEER is commonly in coalition. As stated earlier, PEER is a service organization for public employees; as such, we do not feel that we have the luxury of using only laws that are considered politically correct in seeking to help our clients.

In the handful of scientific challenges where we have employed the IQA, no better procedural avenue presented itself to achieve the results sought by our employee clients.

Compared to the other avenues of oversight described above, the IQA has certain advantages:

1. It allows the scientist/complainant to frame precisely the grounds for rescinding, removing or disclaiming a particular document or study;
2. The agency rules require it to respond within a time certain. In some instances, the agency reply is the first time the agency will have gone on record in response to the issue raised in the complaint;
3. If the agency rejects the challenge, the rules allow the complainant to appeal;
4. The appeal is usually decided by officials not involved in the issuance of the document that is the subject of the complaint; and
5. The entire exchange of complaint, response, appeal and final decision is a matter of public record.

2. Weaknesses of the IQA

In PEER's assessment, the IQA is better than nothing, but only slightly.

The frailties of the IQA reflect the fact that it was a last minute rider stuck onto an omnibus bill with no hearings or debate. The Act reflects the drafting of corporate authors who apparently viewed the mechanism of an IQA challenge as a way to monkey wrench regulation. Presumably, this is why the principal users of the IQA have thus far been industry groups.

Notwithstanding this usage pattern, the IQA is a weak law that essentially consists of a process to formally request that an agency correct itself. As detailed below, the Act has no teeth, requires no consistency and lacks follow-through mechanisms to ensure that the same "mistake" does not recur.

A. Requires the Violator to Discipline Itself

A classic example of how meaningless the IQA is to federal operations can be found the U.S. Army Corps of Engineers. In PEER's experience, no agency is more anathema to requirements that its studies display "quality," "objectivity," and "integrity" than the Corps. Unsurprisingly, the Corps has not even adopted IQA rules. An IQA challenge against a Corps document must be filed with the Department of Defense.

Just last week, the House of Representatives passed Water Resources Development legislation authorizing an estimated \$2.5 billion in new construction to accommodate barge traffic on the Upper Mississippi River and the Illinois Waterway.

In 2000, the Corps economist for this project, Dr. Donald Sweeney, filed a whistleblower disclosure saying top commanders had altered key numbers in an effort to "cook the books" so that the project would appear justified. A Pentagon investigation upheld the whistleblower and two generals were disciplined. In the wake of that scandal, the Corps announced a "restructured" study. But at the heart of the restructured study are economic models that have been severely criticized by three separate panels of the National Academy of Sciences and even by President Bush's OMB.

In 2003, PEER filed an IQA complaint that the Corps ignored. The Corps also ignored the appeal that PEER filed for lack of responsiveness. After several months, PEER filed a complaint in federal district court which we abandoned after the Corps issued a new but equally flawed successor draft to its Upper Mississippi River and Illinois Waterway Navigation System Study.

Despite the scandal and the cascade of critical reports, the House overwhelmingly defeated an amendment to make the project authorization contingent on reliable information indicating future growth in barge traffic.

If Congress repeatedly demonstrates that it does not care about the quality of information that the Executive agencies serves to it, no tinkering with the IQA will make a difference.

B. No Consistency Required

The experience with the Corps demonstrates that some agencies completely ignore the IQA. Other agencies, however, are at least going through the motions of compliance.

PEER has filed two IQA complaints with the U.S. Fish & Wildlife Service, each producing completely dissimilar results.

In May 2003, PEER charged that USFWS relied on false information when it determined that Rocky Mountain trumpeter swans do not constitute a distinct population segment, thereby blocking an effort to protect the rare swans under the Endangered Species Act. The previous January the Service published a 90-day Finding in response to a lawsuit seeking to designate the Tri-state Population of trumpeter swans as a Distinct Population Segment. The finding concluded that there was no “substantial information” to justify a listing. More to the point, the finding also allowed the agency to authorize swan hunters in Utah to shoot trumpeters, which had previously been protected.

In order to support this finding, the Service produced and relied primarily on a previously unpublished study that directly contradicted decades of biological understanding of the Tri-state Population. The PEER complaint detailed how the study failed to meet the most basic standards of the Information Quality Act:

- While the IQA requires that the Service rely on peer-reviewed studies, the primary basis of the finding had never been evaluated, or even read, by trumpeter swan experts;
- The study omitted important available data that contradicted the authors’ thesis; and
- The authors used politically driven language and sweeping generalizations that were not supported by data.

In fact, the study's lead author complained that the Service distorted her conclusions. In a March 7, 2003 letter to USFWS Director Steve Williams, biologist Ruth Shea argued that the Service "wrongly cites" the study "while omitting any mention of that report's real conclusion."

The PEER complaint asked that the Interior Department remove the original 90-day Finding. The agency initially rejected the complaint and PEER appealed.

This was to be the very first appeal under IQA that USFWS handled. Per its rules, the agency empanelled three scientists who had not been involved in the trumpeter swan decision to review the matter. In November 2003, the panel issued a recommendation in PEER's favor. That recommendation sat on the desk of then-Director Steve Williams until March of the next year.

In a one-page letter dated March 26, 2004, Director Williams overruled his scientific panel and rejected PEER's appeal. Williams did not explain his reasons, nor did the IQA require him to do so.

Nonetheless, the Director ordered the challenged agency's work to undergo a "peer review process." In other words, Mr. Williams ruled the data was not broken but that he would fix it right away.

Soon thereafter, another organization filed a lawsuit under the Endangered Species Act to force a federal listing of the trumpeter in Greater Yellowstone. Due to the lawsuit, the agency shelved even the Pyrrhic peer review that it had promised.

Less than two months later, PEER filed a second IQA complaint with USFWS. This complaint was filed jointly with PEER by one of the agency's own scientists. It charged that the U.S. Fish & Wildlife Service was knowingly using flawed science in assessing the habitat and population of the endangered Florida panther. Studies relied upon by FWS to make decisions about proposed development in Southwest Florida inflated panther population and inaccurately minimized habitat needs.

The principal problems cited by the complaint included —

- Equating daytime habitat use patterns (when the panther is at rest) with nighttime habitat use patterns (when the panther is most active);
- Assuming that all known panthers are breeding adults, discounting juvenile, aged and ill animals; and
- Using population estimates, reproductive rates, and kitten survival rates not supported by field data.

That summer, the agency rejected the complaint and PEER and the USFWS scientist appealed. In November, USFWS fired our co-complainant, Andrew Eller, Jr., an 18-year

biologist, who had spent the past ten years working in the Florida panther recovery program.

As with the trumpeter swan challenge, the agency created a three-scientist panel to review the appeal. Again, the panel found in our favor. This time, Director Williams agreed with the panel. In a letter dated March 16, 2005, Williams formally conceded that his agency had been using flawed science in assessing the habitat and population of the endangered Florida panther and ordered the Southeastern Regional Office to effectuate the requested relief.

This seeming victory was mitigated by several factors. Just ten days earlier Director Williams indicated he would resign. His letter to PEER about the IQA decision was formally released on the Monday morning following his very sudden departure. I highly doubt that if the same decision were before Matt Hogan, the acting USFWS Director, or even Dale Hall, who President Bush just nominated to serve as the next Director, the decision would have been the same.

Moreover, on the day that it was released, the USFWS Southeastern Regional Office held a press conference in which it announced that not one single decision or biological review would change as a result of the decision. So, despite an admission of that its key population and habitat assessment measures were significantly inaccurate, the agency intends to continue approving mega-developments in the shrinking, tattered habitat of the endangered Florida panther without skipping a beat.

As of today, the USFWS still has not delivered the relief sought by the IQA complaint. Instead, according to a statement on the Southeastern Regional Office website, they hope to have a revised document ready for comment on December 31, 2005.

Despite the IQA decision that vindicated him, the USFWS did not reinstate Andy Eller. Eller was finally restored to his former pay-grade in a settlement that PEER reached with the agency in late June 2005.

To our knowledge, no responsible official was ever disciplined. Instead, the central official in the affair has reportedly received a Meritorious Service Award.

C. No Enforcement Mechanism

As the foregoing discussion illustrates, nothing in the IQA forces the agency to implement the corrective action that it promises in any sort of timely fashion. Even in cases where the agency has issued disclaimers, there is little to prevent the agency from continuing to base decisions on the disclaimed documents.

In short, the IQA produces meaningful relief only if the agency feels like giving it.

IV. Recommendations

The underlying problem is one of corruption – intellectual corruption where heads are turned the other way so long as disinformation delivers the desired result. This corruption is fed by ideology more than money. In this sense, the federal government today is thoroughly corrupt.

The most important measures for cleaning up the corruption and improving the quality of information in the federal government have little to do with the IQA. The following three simple steps would go a long way, in our judgment, to increasing the factual content of official documents:

1. Stop Punishing Civil Servants for Telling the Truth

As laws are written and implemented currently, the fact that a public servant was trying to stop his or her agency from lying is almost no defense.

We have lost sight of the fact that federal employees work for the taxpayer, not a particular bureau or department. Civil servants work within agencies not for agencies and owe their ultimate allegiance to the public.

As the case of U.S. Park Police Chief Teresa Chambers amply illustrates, agencies are aggressively punishing their employees for telling the truth without permission. In the Chambers case, the Interior Department has made up a new undefined category of “sensitive” information, the disclosure of which will result in termination. The resulting chill on candor even has a name: “the Chambers Effect.”

Last August, the U.S. Department of Interior Office of Inspector General published a survey in which it found that agency workers live within in a “culture of fear” where “hatchet people” mete out punishment based on office politics. The Inspector General sent its survey out to more than 25,000 employees, including supervisors, human resource managers and lawyers, in agencies such as the National Park Service, Bureau of Land Management and the Fish & Wildlife Service. Nearly 40% of those who received surveys responded, with key results including—

- More than one quarter of staff fear retaliation for reporting problems;
- A solid majority do not see the disciplinary system as being fairly administered on a consistent basis; and
- Nearly half believe that discipline is taken on the basis of whom the person knows rather than what they did.

The federal workforce is literally scared to death. There can be no hope of improving the quality of federal agency information if the specialists within the agencies face termination if they dare to try.

2. Congress Should Stop Being Content With Being Lied To

If agencies can lie with impunity to Congress, why should they be expected to tell anyone else the truth?

During the past several months there have been instances where scientists and other experts were constrained from communicating findings directly to Congress. The most prominent instance involved Richard Foster, the Medicare actuary who was ordered under threat of termination not to reveal that the Bush Administration's prescription drug benefit plan would cost an additional \$150 billion over previous estimates. A deceived Congress narrowly passed a huge bill, the true implications of which are only now being realized.

In its subsequent review of that case, the Congressional Research Service (CRS) opined that the restrictions on Foster violated prohibitions against interfering with the communication by a federal employee to Congress (Lloyd Lafollette Act, 5 U.S.C. § 7211 and § 618 of the Consolidated Appropriations Act, 2005, PL 108-477). The Government Accountability Office came to a similar conclusion.

The problem was what to do about this blatant violation of the right to communicate with Congress. A review of those prohibitions shows that Congress envisioned the denial of appropriated funds for such violations but Congress failed to provide a means for invoking that sanction. Without a way to enforce it, the law becomes merely a rhetorical prop.

Members of Congress were reduced to asking then HHS Secretary Tommy Thompson to withhold the salary of one of his top deputies. Not surprisingly, Secretary Thompson demurred.

PEER would suggest that Congress allow for citizen suits to recover appropriated funds misused in restricting communication directly from the salaries paid to officials who violate this law. This somewhat personal sanction would yield a very public benefit.

3. Government Officials Should Be Held Responsible When They Lie or Deliberately Disregard the Truth

Under Sarbanes-Oxley, corporate CEOs are held personally responsible for the annual reports that they sign. This notion should be expanded to include federal officials as well.

At the very least, in cases where federal courts have issued adverse rulings based upon an agency's arbitrary and capricious action, the responsible official should actually be held responsible, in the form of a disciplinary action that would be a permanent part of his or her personnel record.

Why would Congress want to reward, promote and honor officials who violate the very statutes that they are sworn to uphold? Today, such officials have a much better chance of career advancement than those who insist on following the law.

Until the time that there is more than a remote chance of some personal, negative career accountability for approving official documents that do not pass even minimal litmus test of reliability and accuracy, Congress should have no expectation that the quality of federal agency data will improve.

V. Conclusion

While certain members of the Subcommittee may be more interested in strengthening the provisions of the IQA, such actions would have marginal impact, at best. Making the IQA subject to the Administrative Procedure Act, and thus subject to judicial review, would help curb some arbitrary agency decisions. It would not address the fundamental problems, however.

When your rowboat has a hole in the bottom, having a bigger bucket will help you bail water faster, but even with the new, big bucket, you will still sink. Similarly, a stronger IQA in the absence of steps that protect those who tell the truth and punish those who lie will not keep one's head above a deluge of disinformation.

Thank you for this invitation to testify.

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